

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 10, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Robert Bartholomew - Chairman  
Walter Schmidt  
Tom Day  
Nancy M. Bonniwell  
Richard Bayer

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Nancy M. Bonniwell

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Mary E. Finet, Senior Land Use Specialist  
Robyn Schuchardt, Waukesha Co. Assistant Corporation Counsel  
Marylee Richmond, Waukesha Co. Assistant Corporation Counsel  
Jeffrey Kolbow, BA11:031, petitioner  
Gregg Breese, BA11:031, consultant  
Mike Timbers, BA11:031, neighbor  
John and Victoria Pakalski, BA11:029, petitioners  
Attorney Tim Kay, BA11:029, representing the petitioners  
Paul Schultz, BA11:029, architect  
John Ziebell, BA11:029, builder  
Dave and Maggie Eichstaedt, BA11:030, petitioners  
Doug Huskey, BA11:016, petitioner  
Attorney Paul D. Langer, BA11:016, representing the petitioner  
Arleen Lynch, BA11:027, petitioner  
Martin Komondoros, BA11:027

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**CLOSED SESSION:**

Mr. Day

*I make a motion to convene in closed session pursuant to Section 19.85(1)(g) Wisconsin Statutes, to confer with legal counsel from the Waukesha County Corporation Counsel's Office who is rendering oral or written legal advice concerning strategy to be adopted by the Waukesha county Board of Adjustment with respect to litigation in which is involved, specifically concerning the following cases:*

Steve Hegwood vs. Waukesha County Board of Adjustment,  
Waukesha County Circuit Court Case No. 11-CV-1398.

Donald and Susanne Dysland vs. Waukesha County Board of  
Adjustment, Waukesha County Circuit Court Case No. 08-CV-  
3387.

The motion was seconded by Ms. Bonniwell and carried with a roll call vote as follows:

Richard Bayer: *Aye*  
Nancy Bonniwell: *Aye*  
Tom Day: *Aye*  
Walter Schmidt: *Aye*  
Robert Bartholomew: *Aye*

**OPEN SESSION:**

Mr. Day *I make a motion to reconvene in open session.*

The motion was seconded by Ms. Bonniwell and carried with a roll call vote as follows:

Richard Bayer: *Aye*  
Nancy Bonniwell: *Aye*  
Tom Day: *Aye*  
Walter Schmidt: *Aye*  
Robert Bartholomew: *Aye*

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I move to approve the Summary of the Meeting of July 13, 2011,*  
*with the following correction:*

*It shall be noted that Mr. Day recused himself in the case of*  
*BA11:024 Tom Casey.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

**NEW BUSINESS:**

**BA11:031 JEFFREY KOLBOW (OWNER) GREGG BREESE (CONSULTANT):**

Mr. Schmidt *I move to adopt the staff recommendation, for the reasons set*  
*forth in the Staff Report and with all of the conditions set forth in*  
*the Staff Report, with the following modifications:*

*The requested shore setback variance for the proposed*  
*residence with an elevated deck and an adjacent patio shall*  
*be approved.*

*Condition No. 5 shall be revised to read as follows: "The new residence and attached garage must be located so that the house, not including any adjacent deck or patio, is no closer than 64 ft. to the shoreline. Any deck or patio adjacent to the residence must be located at least 52 ft. from the shoreline."*

*Condition No. 9 shall be revised to read as follows: "The existing patio near the lake and the existing non-conforming patio above the middle retaining wall must be removed and the disturbed area restored and re-vegetated. The two upper retaining walls may remain and minor repairs may be made to those walls, but they cannot be rebuilt unless it is determined by the staff of the Planning and Zoning Division and the Land Resources Division that they are necessary to abate a known and identified soil erosion and sedimentation problem. Prior to the issuance of a Zoning Permit for a new residence, a detailed Landscape Plan, showing how the areas of disturbance resulting from the removal of the two patios and any retaining walls (if applicable), must be prepared by a registered landscape architect and submitted to the Planning and Zoning Division staff for review and approval. The Landscape Plan shall also indicate the location, size, and type of any trees to be removed and a timetable for completion."*

*The reasons, as set forth in the Staff Recommendation, shall be revised to read as follows:*

*Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested shore setback variance to permit the existing patio above the middle retaining wall to be reconstructed with permeable pavers would result in an unnecessary hardship.*

*It has been demonstrated that due to the uniqueness of the property and the slope and condition and size of the lot that a hardship exists with respect to shore setback and the proposed new residence. All of the other houses in the*

*immediate vicinity, except the house on the adjacent lot to the north, are much closer to the lake than the proposed residence and if those houses could be utilized for shore setback averaging (which they cannot because the Ordinance permits only houses on the adjacent lots and within 200 ft. of the proposed residence to be utilized for shore setback averaging), the proposed residence would have a conforming shore setback. Therefore, the shore setback of the proposed residence meets the purpose and intent of the Ordinance and the requirements for a shore setback variance have been met.*

*The Board has taken into consideration the letter from the DNR, but having no substantiation that they have visited the property and therefore are familiar with it, the Board chooses not to follow their recommendation. It appears that the DNR is not aware of the uniqueness of the property or the position of the houses surrounding it. Further, when the DNR made their recommendation, they were not privy to the testimony of the applicant and of the various other people who spoke to this issue.*

*On this 9,302 sq. ft. lot, conformance with the open space requirement of 15,000 sq. ft. is impossible and conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 1,395 sq. ft., which would be unnecessarily burdensome, as it would result in less floor area than currently exists and even the construction of a new residence at the minimum required house size of 1,100 sq. ft. and a 20 ft. x 20 ft. garage would exceed the maximum permitted floor area ratio. Therefore, hardships exist with respect to the open space and floor area ratio requirements.*

*Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt that granting the requested open space and floor area ratio variances would provide more than the minimum relief necessary and would result in a residence that is too large for the extremely non-conforming lot, whereas granting open space and floor area ratio variances, as recommended, will permit the construction of a reasonably-sized residence for the lot, that is in keeping with other homes in the area and not contrary to the public interest.*

*With respect to a road setback variance, Marshall Drive is a minor dead-end road, serving only two properties beyond the subject property, and granting a road setback variance to*

*provide minor relief from the road setback requirement, as recommended, will not create a safety hazard or adversely affect the travelling public's use of the road.*

*Therefore, approval of the requested shore and floodplain setback variances necessary to permit the existing patio above the middle retaining wall to be reconstructed with permeable pavers would not be in conformance with the purpose and intent of the Ordinance. However, the approval of variances from the floor area ratio, open space, shore setback, and road setback requirements to permit the construction of a new residence, with an attached garage, deck, and patio, as conditioned, is in conformance with the purpose and intent of the Ordinance.*

The motion was seconded by Ms. Bonniwell and carried with four (4) yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested shore setback variance for the proposed residence with an elevated deck and adjacent patio, **denial** of the requested shore and floodplain setback variances necessary to permit the existing patio above the middle retaining wall to be reconstructed with permeable pavers, and **denial** of the requested floor area and open space variances to permit the construction of the new residence and attached garage, as proposed. However, the Planning and Zoning Division staff recommended **approval** of variances from the floor area ratio, open space, and road setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the construction of a new residence with an attached garage and deck and an adjacent patio, subject to the following conditions:

1. The new residence and attached garage must be reduced in size so the total floor area, including the first and second floors of the residence, any covered porch or entry, and the attached garage, but not including any finished living area in the basement of the residence, does not exceed 2,200 sq. ft. The first floor of the residence must be a minimum of 900 sq. ft. (as required by the Town of Merton Zoning Ordinance) and the attached garage must be at least 400 sq. ft. This will result in a maximum floor area ratio of 23.65%.
2. The footprint of the new residence and attached garage, including any covered porch or entry, shall not exceed 1,400 sq. ft. This will result in a minimum open space of 7,902 sq. ft.
3. The new residence and attached garage must be at least 10 ft. from the side lot lines, as measured to the outer edge of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the 10 ft. offset requirement.
4. Any deck or patio adjacent to the new residence must be at least six (6) ft. from the side lot lines and any sidewalks, walkways, or stairs located along the sides of the residence must be at least three (3) ft. from the side lot lines.

5. The new residence and attached garage, including any adjacent deck or patio, must be located in conformance with the shore setback and floodplain setback requirements. The minimum required floodplain setback is 50 ft. and the minimum required shore setback is the average of the shore setback of the residence on the adjacent property to the south (which will need to be verified by a Plat of Survey - see Condition No. 8) and the otherwise required shore setback requirement of 75 ft.
6. The new residence and attached garage must be located at least 30 ft. from base setback line of Marshall Drive (the edge of the 33 ft. wide platted private road right-of-way set forth in the subdivision plat of Marshall Park Lake Keesus), as measured to the outer edge of the wall, provided the overhang does not exceed two (2) ft. in width. If the overhang exceeds two (2) ft. in width, the building must be located so that the outer edge of the overhang is at least 30 ft. from the base setback line.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed residence and garage, as well as any proposed decks, patios, sidewalks, walkways, or stairs, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. Unless the exact shore setback of the residence on the adjacent lot to the south can be verified by a Plat of Survey of that adjacent lot, the Plat of Survey shall indicate the exact shore setback of the residence on the adjacent lot to the south, so that it can be utilized for shore setback averaging.
9. The existing patio near the lake, the existing retaining wall closest to the lake, and the existing non-conforming patio above the middle retaining wall must be removed and the disturbed area restored and re-vegetated. The two upper retaining walls may remain and minor repairs may be made to those walls, but they cannot be rebuilt unless it is determined by the staff of the Planning and Zoning Division and the Land Resources Division that they are necessary to abate a known and identified soil erosion and sedimentation problem. Prior to the issuance of a Zoning Permit for a new residence, a detailed Landscape Plan, showing how the areas of disturbance resulting from the removal of the two patios, the retaining wall closest to the lake, and any other retaining walls (if applicable), must be prepared by a registered landscape architect and submitted to the Planning and Zoning Division staff for review and approval. The Landscape Plan shall also indicate the location, size, and type of any trees to be removed and a timetable for completion.
10. A detailed Grading and Drainage Plan, showing existing and proposed grades and any retaining walls that are proposed to remain or be rebuilt, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for

completion, the source and type of any fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. The Grading and Drainage Plan must be reviewed and approved by the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the new residence. **Please note that if the Grading and Drainage Plan indicates grade changes determined by the Planning and Zoning Division staff to exceed normal basement construction activities, a Conditional Use Permit for land-altering activity will be required, prior to the issuance of a Zoning Permit for the new residence. The petitioner is encouraged to design the new residence to conform with the existing topography, as there is no guaranty that a Conditional Use Permit for land-altering activity would be approved.** Upon receipt of the Grading and Drainage Plan, the Planning and Zoning Division staff will determine if the proposed grading can be permitted in conjunction with the Zoning Permit or whether a Conditional Use Permit for land-altering activity will be required and whether any replacement retaining walls will be permitted. The Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 8.

11. The existing detached garage and shed/changing house must be removed from the property, prior to the expiration date of the Zoning Permit issued for the new residence.
12. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested shore setback variance for the proposed residence or denial of the requested shore and floodplain setback variances to permit the existing patio above the middle retaining wall to be reconstructed with permeable pavers would result in an unnecessary hardship. On this 9,302 sq. ft. lot, conformance with the open space requirement of 15,000 sq. ft. is impossible and conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 1,395 sq. ft., which would be unnecessarily burdensome, as it would result in less floor area than currently exists and even the construction of a new residence at the minimum required house size of 1,100 sq. ft. and a 20 ft. x 20 ft. garage would exceed the maximum permitted floor area ratio. Therefore, hardships exist with respect to the open space and floor area ratio requirements.

Variances, however, should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt that granting the requested open space and floor area ratio variances would provide more than the minimum relief necessary and would result in a residence that is too large for the extremely non-conforming lot, whereas granting open space

and floor area ratio variances, as recommended, will permit the construction of a reasonably-sized residence for the lot, that is in keeping with other homes in the area and not contrary to the public interest.

Further, granting a road setback variance will facilitate the location of a new residence in conformance with the shore and floodplain setback requirements. Marshall Drive is a minor dead-end road, serving only two properties beyond the subject property, and granting a road setback variance to provide minor relief from the road setback requirement, as recommended, will not create a safety hazard or adversely affect the travelling public's use of the road.

Therefore, approval of the requested shore setback variance necessary to permit the new residence with an elevated deck and adjacent patio, as proposed, and approval of the requested shore and floodplain setback variances necessary to permit the existing patio above the middle retaining wall to be reconstructed with permeable pavers would not be in conformance with the purpose and intent of the Ordinance. However, the approval of variances from the floor area ratio, open space, and road setback requirements to permit the construction of a new residence, with an attached garage, deck, and patio, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA11:029 JOHN AND VICTORIA PAKALSKI (OWNERS)**  
**PAUL SCHULTZ (ARCHITECT):**

Note: Mr. Schmidt recused himself from this hearing.

Mr. Day

*I move to **approve** the request for variances from the shore and floodplain setback, floor area ratio, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance, to permit the residence to remodeled and expanded, with the following conditions:*

- 1. The 12.3 ft. x 23.6 ft. non-conforming detached garage/shed near the road must be removed from the property.*
- 2. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed additions does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The*



*following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

- 3. The proposed sitting room addition above the existing pool room must be redesigned so that is not cantilevered beyond the south wall of the residence. Prior to the issuance of a Zoning Permit, a complete set of plans, in conformance with this condition, must be submitted to the Planning and Zoning Division staff for review and approval.*
- 4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.*
- 5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the location of the proposed additions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*

*The reasons for this decision are as follows:*

*A hardship exists due to the condition of the existing structure and that hardship is not a self-imposed hardship. The residence is over thirty years old and there are safety issues with respect to mold. The proposed changes are necessary in order to deal with the flawed design and resulting mold conditions.*

The motion was seconded by Mr. Bayer and carried with three (3) yes votes. Ms. Bonniwell voted no. Mr. Schmidt had recused himself from this hearing and therefore did not vote.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the shore and floodplain setback, floor area ratio, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be remodeled and expanded.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner has failed to demonstrate that the request for variances meets the three required tests for the granting of a variance. The first test is whether compliance with the ordinance would cause the owner to experience an unnecessary hardship and whether compliance with the Ordinance requirements would unreasonably prevent the owner from using the property for a permitted purpose. This test further indicates that variances are intended to provide only the minimum amount of relief necessary to allow a reasonable use of the property. The property is currently being used for a permitted purpose with the 4,456 sq. ft. two-story residence and two detached garages. In 1980, the Board granted a variance from the floor area ratio requirements to allow the residence and detached garages to exceed the maximum allowed floor area. The Board indicated at the time that with the variance, the previous owner would have adequate use of his property. Furthermore, the lot exceeds the minimum required lot size for the zoning district. The petitioner identifies discrepancies in how floor area ratio was calculated relative to the basement level in the past as the hardship for a floor area ratio variance. However, as noted in the staff report above, the proposed additions to be located over the existing basement level pool do not increase the floor area ratio on the site. The petitioner is proposing additions and a cantilevered area that will increase the floor area ratio on the site.

The existing residence does not comply with the shore and floodplain setback requirements and the petitioner is proposing to further encroach into the setback for the proposed sitting room addition. The game room addition will also not comply with the shore and floodplain setback requirements. The petitioner has not identified a hardship for not complying with the required shore and floodplain setback requirements for the proposed additions. Although the existing residence does not comply with the shore and floodplain setback requirements, it is a substantial structure and the site can be used for a permitted purpose without the shore and floodplain setback variances.

Therefore, it has not been demonstrated that compliance with the Ordinance would prevent the owner from using the property for a permitted purpose or would be unreasonably burdensome on them.

The second test requires the petitioner to demonstrate that there are unique physical conditions existing on the property, which are not self-created, and which prevent compliance with the Ordinance thereby causing a hardship and/or no reasonable use. The physical limitations of the property and not the personal circumstances or desires of the property owner are the basis for this test. The lot is 100 ft. wide, is similarly sized to the two adjacent lots and is significantly larger than many of the other lots in the area. The lot slopes to the lake and has a fully exposed basement, again similar to many of the homes in the area. The petitioner has indicated that the site has poor grading on the side yard which will be resolved by the construction of the game room addition to the basement level. This is not a unique physical condition of the property that justifies the granting of a floor area ratio variance. The petitioner could explore other options to alleviate the drainage problem they are experiencing.

The third test requires the petitioner to demonstrate that the granting of the variance will not adversely affect the general public interest/welfare or be detrimental to nearby properties or the natural resources in the area. The petitioner indicates that other homes on the street were built during a time when floor area ratio was not enforced and therefore are much larger in size. The

petitioner also indicates that the homes that have been granted variances comply with a 19.5% floor area ratio that would be permissible if the property had sewer. The granting of the requested variances would further increase the bulk of the structure that currently exceeds the floor area ratio limitations and would increase the amount of impervious surface on the site. Therefore, the proposed additions to the residence may be detrimental to the nearby properties or the natural resources in the area.

As the recommendation herein is for denial of the request for variances from the shore and floodplain setback and floor area ratio requirements of the Ordinance for the proposed additions, the variance from remodeling a non-conforming structure in excess of 50% of its fair market value should also be denied. It should be noted that the petitioners would be able to significantly remodel the existing structure and still be under 50% of its fair market value.

The petitioner has not met the three required tests for the granting of variances. The petitioners identify several building code issues as justification for the granting of variances to allow the structure to be expanded. Existing building code violations due to the design of the residence does not justify the granting of variances to allow a structure that exceeds the floor area ratio requirements on a conforming sized lot to be further expanded. Other options to correct these issues could be pursued that may not require variances. The approval of this request would not be within the purpose and intent of the Ordinance.

**BA11:030 DAVE AND MAGGIE EICHSTAEDT (PARRY SPRINGS FARM LLC):**

Mr. Schmidt

*I move to approve the request, for the reasons set forth in the Staff Report and with the three conditions set forth in the Staff Report.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback requirement and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling and expansion of the residence, subject to the following conditions:

1. The north wall of the addition shall extend no further north than the line of the north wall of the existing residence and the north wall of the existing residence extended to the east, with an overhang not to exceed two (2) ft. in width.
2. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. The existing covered picnic shelter located southwest of the residence must be removed from the property or relocated to a conforming location, at least 10 ft. from the residence, prior to the expiration date of the Zoning Permit issued for the remodeling and expansion of the residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant the requested variances, as that would preclude the replacement of the enclosed porch with a more usable addition that will extend no closer to the road than the existing residence and would severely limit the petitioners' ability to remodel and update their residence.

The residence is a substantial structure that has been in existence for many years and it is located far enough from the road that it does not pose a safety hazard or interfere with the travelling public's use of the road. Further, most of the non-conforming portion of the proposed addition is a replacement of an existing enclosed porch. The proposed remodeling and expansion is keeping with the design of the residence, which is a farm house that was built over a hundred years ago, and it will enhance its appearance, in a manner that is not contrary to the public interest and will not adversely affect the neighboring properties. Therefore, the approval of the requested variances from the road setback requirement and from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Shoreland and Floodland Protection Ordinance is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

##### **BA11:016 DOUG HUSKEY:**

Mr. Day

*I move to approve the petitioner's request for reconsideration of our decision of July 13, 2011, with the petitioner being required to pay an additional fee.*

*The motion was not seconded and therefore not approved.*

The Planning and Zoning Division staff's recommendation, as set forth in a Memorandum dated August 10, 2011, was as follows:

Based on the information submitted, the Planning and Zoning Division staff recommends that the Board of Adjustment **not reconsider** their Decision dated July 13, 2011. The petitioner's representative has provided a letter from a neighbor and pictures of the site. Although these things were not presented at the original hearing, they certainly could have been. The neighbor was provided notice of the original hearing. The petitioner's representative indicates that the decision should be reconsidered based on mistakes of fact and law contained in the Board's decision but has not provided written documentation of what they believe the mistakes of fact and law are. The petitioner's representative has therefore not met the standards for reconsideration.

**BA11:027 ARLEEN LYNCH:**

Mr. Day

*I move to approve the staff's recommendation for approval of the petitioner's request for a reconsideration of our decision of July 13, 2011, and schedule the reconsideration for our next meeting.*

The motion was seconded by Mr. Schmidt.

A discussion ensued and Mr. Day amended his motion to provide that the petitioner shall not be required to pay an additional fee.

Mr. Schmidt then seconded the amended motion and it was carried unanimously.

The Planning and Zoning Division staff's recommendation, as set forth in a Memorandum dated August 10, 2011, was as follows:

The Planning and Zoning Division staff recommends that the Board reconsider their previous decision and analyze the location and size of the garage in light of the information provided on the new Plat of Survey. The Plat of Survey provides new information relative to the location of the road right-of-way, the existing septic area, and the location of overhead power lines relative to the proposed garage construction. Based on the information on the new Plat of Survey, a 20 ft. by 20 ft. garage, as approved by the Board, cannot be constructed in the location required by the Board. The Planning and Zoning Division staff further recommends that the petitioner investigate the matter of the existing overhead power lines and any setbacks and/or construction requirements of the utility company relative to the lines.

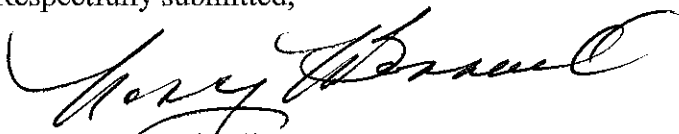
**ADJOURNMENT:**

Ms. Bonniwell

*I move to adjourn this meeting at 11:05 p.m.*

The motion was seconded by Mr. Bayer and carried unanimously.

Respectfully submitted,



Nancy M. Bonniwell  
Secretary, Board of Adjustment